

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 26 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

)  
Amendment of Part 90 of the )  
Commission's Rules Pertaining )  
to End Users and Mobile Licensing )  
Information )

PR Docket No. 92-78

ORIGINAL  
FILE

To: The Commission

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COMMENTS  
OF  
THE NATIONAL ASSOCIATION OF  
BUSINESS AND EDUCATIONAL RADIO, INC.

Respectfully submitted,

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### SUMMARY

The ability of the Commission to accurately determine spectrum utilization and of frequency advisory committees to have available the most up-to-date and accurate spectrum utilization information is crucial to the frequency assignment process. Therefore, NABER believes that any mechanism adopted by the Commission as an alternative to the current process must not degrade the availability or reliability of the information that is fundamental to effective spectrum management.

Although information regarding the actual end users on two-way private carrier systems is not absolutely necessary from a spectrum utilization standpoint, the information is nevertheless useful. The type of user significantly impacts the amount of air time which is used. Therefore, having this information available leads to better frequency recommendations, more efficient utilization of spectrum and better service to the public. However, if it is the Commission's decision to eliminate this requirement, NABER requests that the Commission retain a requirement to file annually a form showing the number of mobiles on a system. In this manner, coordinators will be able to determine spectrum utilization on a particular frequency and determine whether a system is active or dormant. This leads to better frequency recommendations and better spectrum utilization.

NABER is especially concerned that the Commission's proposal to provide the frequency advisory committees with information concerning grants of modification applications will not provide

timely information to the coordinators. The four-to-twelve week period which the Commission requires to grant applications means that the coordinator may be working with information which may be significantly out-of-date. Temporary authorization for modification applications may pose a significant risk of interference difficulties among users on shared channels. Therefore, if the Commission decides to provide for direct filing of applications for modifications with the Commission, NABER suggests that the Commission require that such applicants certify that they have provided a copy of the application to the relevant frequency coordinator. In this manner, the coordinator's data base can be quickly updated.

The Commission's proposal to have modification applications filed directly with the Commission will impose costs upon licensees, delay the licensing process and degrade the accuracy of the coordinator's data base. Further, the proposal may impose additional difficulties for users resulting from temporary authorizations of modified facilities. Therefore, NABER strongly recommends that the Commission not adopt this portion of the NPRM.

While NABER is not opposed to the 35 percent requirement for paging systems, NABER continues to believe that an annual reporting requirement of the number and type of paging units on PCP systems will yield more significant benefits to licensees in terms of good spectrum management while actually saving coordination costs in the long run.

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To: The Commission

COMMENTS  
OF  
THE NATIONAL ASSOCIATION OF  
BUSINESS AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), through counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making ("NPRM") issued by the Commission in the above-referenced proceeding.<sup>1</sup>

I. BACKGROUND

NABER is a national, non-profit, trade association headquartered in Alexandria, Virginia, that represents the interests of manufacturers, vendors and service providers as well as large and small businesses that use land mobile radio communications as an important adjunct to the operation of their businesses and that hold thousands of licenses in the private land mobile radio services. NABER has five membership sections representing Users, Private Carrier Paging licensees, Radio

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<sup>1</sup>57 FR 20070 (May 11, 1992).

Dealers, Technicians and Specialized Mobile Radio operators. NABER comprises over 6,000 of these businesses and service providers holding thousands of licenses in the private land mobile services.

For the past 19 years, NABER has been the recognized frequency coordinator in the 450-470 MHz and 470-512 MHz bands for the Business Radio Service. NABER is also the Commission's recognized frequency coordinator for the 800 MHz and 900 MHz Business Pools, 800 MHz "old" conventional channels for Business eligibles and conventional SMR Systems, and for the 929 MHz paging frequencies. In its Report and Order in PR Docket No. 83-737, the Commission designated NABER as the frequency coordinator for all Business Radio Service frequencies below 450 MHz and, in a joint effort with the International Municipal Signal Association ("IMSA") and the International Association of Fire Chiefs ("IAFC"), the Special Emergency Radio Service frequencies.

In this proceeding, the Commission has proposed to modify end user licensing and reporting requirements below 800 MHz. Specifically, for two-way systems, the Commission has proposed to: (1) eliminate the requirement for two-way private carrier systems to submit end user lists;<sup>2</sup> (2) file license modification applications when mobile loading changes by 20 percent; and (3) file such license modification applications directly with the

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<sup>2</sup>The Commission claims at paragraph 13 of the NPRM that after the initial end user list with the application, there is no further obligation to submit updated lists to the Commission. However, Section 90.179(e) of the Commission's Rules provides that an updated list is to be filed annually with the frequency advisory committee, which could then provide this information to the Commission, if necessary.

Commission. For private carrier paging ("PCP") systems, the Commission has proposed to: (1) eliminate the requirement for private carrier paging systems to submit end user lists; (2) file license modification applications when paper loading changes by 35 percent; and (3) file such license modification applications directly with the Commission.

## II. COMMENTS

NABER has long supported the Commission's efforts to make the licensing process more efficient and less costly for applicants. However, the ability of the Commission to accurately determine spectrum utilization and of frequency advisory committees to have available the most up-to-date and accurate spectrum utilization information is crucial to the process. Therefore, NABER believes that any mechanism adopted by the Commission as an alternative to the current process must not degrade the availability or reliability of the information that is fundamental to effective spectrum management.

Since October of 1986, when frequency advisory committees were given the charge by the Commission to provide increased assistance in management of the private spectrum, NABER and other frequency advisory committees have undertaken the significant task of improving the accuracy of the licensing data base to provide the best frequency recommendations possible to applicants and to resolve disputes among licensees. It is NABER's view that some of the Commission's proposals in this proceeding will set back five years of progress in managing crowded spectrum.

The frequency coordination and licensing requirements discussed in this proceeding were adopted by the Commission in PR Docket No. 83-737 after significant consideration of the needs of spectrum management as well as regulatory ease for licensees. One result of the proceeding was the formalization of the private carrier form of licensing below 800 MHz. In addition, the Commission specifically recognized the need for accountability of spectrum use and that the value of the private carrier or community repeater form of licensing diminishes if there is no mechanism to determine whether users are being added to or leaving the system. NABER believes that any change in the current licensing requirements must give careful consideration to the analysis in PR Docket No. 83-737 which led to the creation of the current licensing system.

In PR Docket No. 92-79, the Commission has recognized the importance of need for certain private carrier licensees (conventional SMR) to provide the Commission and frequency advisory committees with up-to-date information of the number of users on the system. For private carrier systems below 800 MHz, the need for accurate accounting of mobile users is critical to ensure that the best frequency assignment is made for every applicant.

**A. Utilization Of Licensing Information  
By The Commission And Coordinators**

The Commission states in the NPRM that it has not been aware of many difficulties relating to end user lists and has rarely used



such lists.<sup>3</sup> It also states that it is not aware of any cases where a frequency advisory committee has refused a modification application to add mobile units and that the Commission "uniformly" grants such applications.<sup>4</sup> However, NABER has often been made aware of operational difficulties on shared spectrum because of the manner in which interference problems are processed. Typically, when a user complains of interference to the Commission's local Field Operations Bureau ("FOB"), the user is referred to the frequency advisory committee (often NABER), which then utilizes significant resources in order to attempt to resolve the difficulty. If NABER is unable to resolve the matter it is then referred to the Commission's Licensing Division in Gettysburg, Pennsylvania. Thus, Commission may not become aware of the interference problem because of the efforts of the frequency advisory committee or the important role which accurate licensing information played in the effort. However, NABER is acutely aware of the need for and importance of accurate licensing and user data in resolving these cases.

Similarly, the information provided by accurate licenses and user lists is used to spot potential difficulties. In one such case, a private carrier licensee was authorized for 25 pagers, 50 vehicular units and 50 portable units on a 460 MHz frequency. Upon receipt of the user list, NABER discovered that the licensee actually had 1 mobile unit and 1315 paging units on the system.

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<sup>3</sup>See, for example, paragraph 13 of the NPRM.

<sup>4</sup>See, for example, NPRM at paragraphs 24, 26 and 29.

Clearly, the utilization of a frequency in this manner directly affects proper frequency coordination in the area, and because it had the user lists available to it NABER was able to resolve the situation. As a result future users in the area will benefit from better and more accurate coordinations.

In another situation, a user list from a two-way private carrier revealed that the only user on the system was a governmental entity. At the time, such use was contrary to the Commission's Rules. -NABER was able to inform the licensee of its non-compliance, which will prevent problems for the licensees and other users in the area in the future.

In other cases, the loading list requirement has enabled NABER to determine that certain private carrier systems were no longer in operation, well in advance of the five year expiration date. This information has been invaluable in the frequency assignment process. For example, on June 21, 1990, NABER sent a letter to the Chief of the Private Radio Bureau detailing the numerous responses from private carrier licensees when queried by NABER about their loading. A significant number of the 1609 private carrier licensees contacted never constructed their systems. Thus, having a reporting mechanism in place was important to maintaining an accurate data base and providing new applicants with the best choice of frequency.

In the past, NABER advised the Commission of licensing trends for systems below 800 MHz where NABER has noted problems. In meetings and letters sent to the Commission over the past several

years, NABER has suggested changes in the licensing system employed by the Commission. NABER has used licensing information in its records to propose changes in frequency allocations in order to more fully utilize scarce spectrum.<sup>5</sup>

B. Two-Way System Loading and Licensing Information

1. Two-Way Private Carrier Annual Loading Lists

Although information regarding the actual end users on two-way private carrier systems is not absolutely necessary from a spectrum utilization standpoint, the information is nevertheless useful. The type of user significantly impacts the amount of air time which is used. Therefore, having this information available leads to better frequency recommendations, more efficient utilization of spectrum and better service to the public. For example, if a private carrier system has taxicab companies or courier services among its users, system utilization can be expected to be greater than the average system. Similarly, a private carrier system which consists mainly of a security company has an entirely different utilization pattern which will tell a coordinator whether the frequency is likely to be heavily used during certain hours.

However, if it is the Commission's decision to eliminate this requirement, NABER requests that the Commission retain a requirement to file annually a form showing the number of mobiles on a system. In this manner, coordinators will be able to

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<sup>5</sup>See, for example, Report and Order, PR Docket No. 88-373, 4 FCC Rcd 5756 (1989).

determine spectrum utilization on a particular frequency and determine whether a system is active or dormant. This leads to better frequency recommendations and better spectrum utilization.

## 2. Two-Way Private Carrier License Modifications

Mobile loading information is extremely important in proper coordination of shared frequencies. The frequency advisory committee must have channel utilization information which is precise and up-to-date in order to effectively recommend the best frequency to applicants.

While the addition of a single mobile unit may not significantly effect spectrum utilization, creating a percentage threshold for licensees to be required to modify their licenses leads down a slippery slope towards degradation of the data base and erosion of the ability to effectively manage spectrum.

The Commission states that it is "questionable" whether coordinators have ever rejected a requested increase in the number of mobile units. In fact, there are many circumstances where the frequency advisory committees have made recommendations other than the requested modification. For example, the Commission is aware of the repeated incidences where certain applicants have filed for and received frequency coordination for new systems with several mobile units, only to file a modification application immediately after grant to increase the number of units to dozens of units.<sup>6</sup> In other cases, the coordinator may suggest that the applicant

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<sup>6</sup>See, for example, letter of December 2, 1985 from Robert S. Foosaner, Chief, Private Radio Bureau, to International Taxicab Association, No. 7330-01.

employ a two frequency system or an alternative frequency for the entire system in order to ensure compatibility among users.

Requiring modification applications are an important source of information for frequency coordinators in providing evidence of an active community repeater. When the coordinator is reviewing an application for a new system, the coordinator may observe several possible frequencies licensed to community repeaters which are equally loaded. The coordinator will look for recent activity on the repeater in order to determine if any of the systems may not be active. Thus, the modification requirement serves to provide significant information to the coordinator beyond the mere loading counts (which of course are also important). Therefore, NABER opposes the Commission's proposal to require modification for two-way licensees only when the change meets or exceeds twenty percent of the total number of authorized units.<sup>7</sup>

C. Coordination Of Two-Way Private Carrier  
And PCP Modification Applications

It is the Commission's assertion that the frequency advisory committee "essentially does not make a frequency recommendation" and "no coordination activity occurs" for modification applications to change the number of mobile units on a system, and the

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<sup>7</sup>The Commission refers in paragraph 28 of the NPRM to "instant coordination". This process does not relate to mobile unit modifications. Rather, NABER created this mechanism for add-on customers to community repeaters, not for modification of existing users. NABER performs significant review and coordination functions for such applications, and it is not the "rubber stamp" which the Commission suggests. Instant coordination presents a means by which service providers can have customers on the air as soon as possible without the need to consider FAA regulations, etc.

Commission proposes to have such applications sent directly to the Commission.<sup>8</sup>

As explained above, significant coordination activity does in fact occur for modification applications, and not all applications are coordinated as submitted. While the amount of activity varies with the type of application, the band and the area of operation, coordination of modifications is an important part of spectrum management.

NABER is especially concerned that the Commission's proposal to provide the frequency advisory committees with information concerning grants of modification applications will not provide timely information to the coordinators. The four-to-twelve week period which the Commission requires to grant applications means that the coordinator may be working with information which may be significantly out-of-date. During the minimum four week period for the Commission to process an application, NABER would typically coordinate 1,846 applications for licenses below 800 MHz. During the twelve week period, NABER would typically coordinate 5,538 applications for licenses below 800 MHz. It is likely that one or more of these applications could directly impact the pending application (or vice versa).

In addition, applicants will have forwarded their applications to the Commission and, pursuant to Section 90.159(a) of the Commission's rules, will be able to operate the modified facility under the Commission's temporary authorization rule prior to any

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<sup>8</sup>NPRM at para. 28-29.

review of the application. Temporary authorization in such cases may pose a significant risk of interference difficulties among users on shared channels. NABER has discussed in previous proceedings how improper temporary authority, either inadvertently or purposely, may have a devastating effect on other users. Review by the frequency advisory committee prior to temporary authority was an important part of the Commission's decision to adopt Section 90.159(b).<sup>9</sup>

While NABER believes that the filing of modification applications with the frequency advisory committee presents the best means available to ensure the best spectrum management possible, NABER is sensitive to the concerns of some users which do not believe that certain minor modifications need to be reviewed. Therefore, if the Commission decides to provide for direct filing of applications for modifications with the Commission, NABER suggests that the Commission require that such applicants certify that they have provided a copy of the application to the relevant frequency coordinator. In this manner, the coordinator's data base can be quickly updated. However, if the Commission elects not to require service on the coordinator, NABER requests that the Commission exempt the frequency advisory committee from any responsibility for interference resulting from the direct filing of modification applications, including the coordination of additional users on the frequency during the processing of modification applications.

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<sup>9</sup>Report and Order, PR Docket No. 88-567, 66 RR 2d 1833 (1990).

In the Commission's Report Regarding the President Regulatory Reform Program dated April 28, 1992, the Commission reports that the changes proposed in this proceeding will save licensees \$93,000.00 each year in license filing and coordination fees. NABER is concerned that the Commission's analysis neglects to take into account the significant tasks which are performed by the frequency advisory committees, in addition to the traditional selection of frequency, which are an integral part of the spectrum management process and impose significant costs.

For example, NABER currently coordinates approximately 32,000 applications each year. Of these applications, NABER must correct a significant number. In 1990, NABER needed to correct 62% of the applications it received. In 1991, 68% of the applications received by NABER needed corrections. So far in 1992 the number of applications needing corrections has continued to increase, with 78% of the applications received needing corrections. NABER's effort, part of its commitment to the Commission and the public as detailed in PR Docket No. 83-737, significantly reduces the burden on the Commission's limited resources in Gettysburg, Pennsylvania, permitting the Commission's licensing process to operate as efficiently as possible.

The Commission's proposal means that the corrections for modification applications will need to be done by the Commission. This additional work represents a significant effort which will impose costs on the Commission. However, the Commission's analysis



to the President fails to account for the costs of this effort or for the delays in the licensing process which will result.

Additionally, the Commission's proposal to provide the frequency advisory committees with information concerning grants of modification applications will not provide timely information to the coordinators and will impose significant costs beyond the current coordination costs. In this regard, it is the Commission's practice to provide frequency advisory committees with hard copies of licenses issued by the Commission. Because only hard copies of licenses are provided, the frequency advisory committee must manually enter every call sign and expiration date into the database. The Commission's proposal will significantly expand the information which will need to be manually entered into the data base, at an increased cost, which will need to be passed on to initial licensees.<sup>10</sup>

Thus, the Commission's proposal to have modification applications filed directly with the Commission will impose costs upon licensees, delay the licensing process and degrade the accuracy of the coordinator's data base. Further, the proposal may impose additional difficulties for users resulting from temporary authorizations of modified facilities. Therefore, NABER strongly recommends that the Commission not adopt this portion of the NPRM.

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<sup>10</sup>In addition, the time necessary to enter this information into the date base will further delay providing the coordinator with timely and up-to-date information.

#### D. Private Carrier Paging System Licensing Requirements

In response to NABER's APCP Section's Petition for Rule Making, the Commission has proposed to adopt new rules for PCP systems different than recommended by APCP. Specifically, the Commission has proposed to: (1) eliminate the requirement for private carrier systems to submit end user lists; (2) file license modification applications when pager loading changes by 35 percent; and (3) file such license modification applications directly with the Commission.<sup>11</sup> Alternatively, the Commission proposes a channel occupancy test for requiring modification applications.

While NABER is not opposed to the 35 percent requirement, NABER continues to believe that an annual reporting requirement of the number and type of paging units on PCP systems will yield more significant benefits to licensees in terms of good spectrum management while actually saving coordination costs in the long run.<sup>12</sup>

As discussed previously, the annual reporting requirement is important to notify the coordinator as to current utilization and indicate active PCP systems. The crowded paging-only frequencies

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<sup>11</sup>The Commission states at footnote 38 that NABER's interpretation of Section 90.179 of the Commission's Rules as it applies to PCP systems is incorrect. However, NABER's interpretation is the interpretation of the rule specified by the Commission itself (See Exhibit 1). Regardless of the correct interpretation of the rule section, it is nevertheless important that the frequency advisory committee have available to it current-up-date information regarding frequency utilization whenever there are separate systems sharing a paging or two-way channel.

<sup>12</sup>The Commission's adoption of the exclusivity proposal for 900 MHz paging-only frequencies should eliminate the need for the provision of loading information for exclusive use systems.

in the 150 and 460 MHz bands has forced the adoption by NABER of complex coordination procedures for systems. Yearly loading information will aid this procedure, permitting faster coordinations for such frequencies and limiting the number of costly disputes which are brought to the Commission for disposition.

The Commission states in footnote 42 that NABER "... does not indicate how information about the number and type of pagers gives a uniform measure of channel occupancy....". However, in letters which NABER has sent to the Commission regarding NABER's frequency coordination procedures for paging-only frequencies, NABER has previously provided the Commission with information regarding the amount of airtime required for different type of paging formats. In addition, paragraphs 24 and 25 of the NPRM refer to the differing transmission length of different type of paging systems. NABER has worked closely with its APCP Council in developing coordination guidelines which take into account the type of pagers used on the system. Each coordinator has a chart which details the relative transmission length of pages in various formats, which can then be extrapolated for the number of units on the system to determine the approximate amount of airtime available on the channel.<sup>13</sup> It is extremely important that the coordinator have this information available for frequency recommendations.

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<sup>13</sup>Other factors are also considered, such as whether the system is a wide-area system, what type of monitoring equipment is employed, etc.

NABER, however, does not support the Commission's proposal for a channel occupancy test for determining when modification applications must be filed. Similar requirements for common carrier paging systems when applying for an additional channel has only yielded confusion on the part of licensees. While utilization of the channel is important for determining channel occupancy, licensees should not be required to employ complex calculations to determine when to file a modification application. The process should be kept as simple as possible to ensure maximum licensee compliance.

### III. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

NATIONAL ASSOCIATION FOR BUSINESS  
AND EDUCATIONAL RADIO, INC.

By: David E. Weisman  
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Date: June 26, 1992

**Federal Communications Commission**

Gettysburg, PA 17325

August 4, 1988

In Reply Refer To:

7110-16

Lukas, McGowan, Nace and Gutierrez  
1819 H Street, NW  
Seventh Floor  
Washington, DC 20006

Attn: Marjorie J. Giller

Dear Ms. Giller:

This letter is in response to your recent correspondence concerning the requirements outlined in Rule 90.179(e).

Rule 90.179(e) indicates that licensees of shared radio stations must report to their frequency coordinator certain information concerning the users of their system. You questioned whether this was a requirement imposed on licensees of private carrier paging stations, such as your client, Communications Properties Associates. The Rule does not exempt private carrier paging licensees from this requirement and specifically states that all licensees of stations operated under the provisions of Rule 90.179 provide the necessary information to the frequency coordinator. It is expected that CPA will comply with Rule 90.179 by providing NABER with the necessary information.

It is hoped that this letter has been responsive to your inquiry.

Sincerely,

  
for Terry L. Fishel  
Chief, Land Mobile Branch